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AUTHOR Marchetti, Allen
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ABSTRACT

The paper reviews issues in the Wyatt versus Stickney court case concerning the constitutional right to treatment for institutionalized persons with mental retardation. Among topics considered are the role of the American Association of Mental Deficiency in the court proceedings, the original intent of the case as an employee action, and the content of the eventual consent decree settling the litigation in 1986. The key elements of the consent decree are explained, including the return of control of the system to the state of Alabama and the replacement of the office of court monitor with a state-operated advocacy system. It is concluded that the settlement not only preserves the benefits of the original litigation but sets a forward tone for the future. Accomplishments in the state's system serving persons with mental retardation are summarized, and it is noted that despite some economic and political disincentives the state's community system continues to grow. (CL)

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Presentation

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Wyatt v. Stickney: A Consent Decree

Allen Marchetti, Ph.D.

Alabama Department of Mental Health
P. O. Box 3710
Montgomery, Alabama 36193

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Mr. Lawson, fellow panelists, and fellow colleagues of AAMD--

It is of significance that a presentation entitled "Wyatt v. Stickney: A Consent Decree" be presented at the 111th Annual Meeting of AAMD as a part of a presentation on institutional change. This organization has had a long history of involvement in the Wyatt litigation.

In 1959 AAMD's Project on Technical Planning in Mental Retardation undertook a study of public residential facilities for persons with mental retardation. This project resulted in the document, "Standards for Residential Institutions for the Mentally Retarded." In 1966 AAMD received a grant to fund an evaluation of 134 residential facilities for persons with mental retardation, and Partlow State School and Hospital was surveyed in 1967. The review team noted many deficiencies which were to be detailed in the Wyatt litigation approximately 5 years later. The report noted that Partlow, the only facility in the state of Alabama for persons with mental retardation, was spending at that time $3.25 per day per

resident, maintained a staff to resident ration of .28 staff to each resident, had a facility census exceeding 2300, and a staff turnover rate of approximately 70%. A review of national statistics in 1967 reflects that what was occurring in Alabama was more the rule than the exception.

In 1972 AAMD was to enter the Wyatt litigation as an amicus curiae. Our organization's leadership, including a number of its past presidents and many of its members, was to become actively involved in support of either the plaintiff's or the defendant's position. Many were to travel to Alabama to review our facilities and/or testify in the litigation.

AAMD was to again figure actively in future phases of the litigation. A new phase of Wyatt began in December, 1975, when the court permitted reopening of discovery to determine the defendant's compliance with the 1972 order. The case was again re-heard in November of 1978. At this time, AAMD began to re-evaluate its role as an amicus in this litigation.

With regard to this matter, H. Rutherford Turnbull, III, past president of AAMD, indicated in his presidential address of 1986: "At its next meeting in December of 1978, the council again confronted the issue of institutions. This time the issue was whether AAMD had sufficient control of the lawyers in the Wyatt case. That case was then before the federal district court for the western district of Alabama on a motion to appoint a special master to oversee the operation of Alabama's institutions and to enforce the federal court's order establishing standards of care and habilitation. The council decided to withdraw financial support from the attorneys for the plaintiffs.

This decision, predicated on the difficulty of communicating with the attorneys, in truth was a decision to withdraw from that case as an active amicus. The fact that the financial issue disguised the real issue of being amicus is revealed by the very next resolution passed by council--that AAMD clarify its role as amicus as being only that of a 'neutral friend of the court, not as a friend of the plaintiffs or defendants.'"

As indicated in Mr. Turnbull's statements, there is still significant debate in the field regarding what is or should have been AAMD's role in this litigation and similar litigation throughout the nation. As we debate these issues regarding institutional change and alternatives to institutionalization, we must also continue to ponder our role as individuals, members of professional organizations, and of AAMD itself in bringing about such change.

With regards to the original Wyatt litigation, several disturbing facts remain. Why did it take 5 years for Wyatt to be forthcoming when such a prominent organization such as AAMD detailed these deficiencies 5 years earlier in 1967? Why did it take an employee action to bring about this litigation instead of an action related to resident rights and a concern for their care and well-being?

Known nationally as a landmark decision establishing a constitutional "right to treatment," Wyatt's inception was not a suit for the rights of mentally retarded persons at all, but

rather, the original suit was an employee action. Due to a budget deficit of approximately $500,000, then Commissioner Stonewall Stickney terminated 99 employees at Bryce Hospital, a facility for mentally ill persons. The original suit was an attempt to regain re-employment by these employees, and only as a tactical move was the name, Ricky Wyatt, a patient at Bryce and a nephew of an employee, added to the lawsuit which was filed in the United States District Court for the Middle District on October 23, 1970.

It was Judge Frank M. Johnson, Jr. who, in reaction to the suit, indicated his primary interest was not in the employees' claim for re-employment but rather in the welfare of residents at Bryce. It was these statements which would ultimately lead to the refiling of this landmark case and the judge's decision on March 12, 1971, that involuntarily, civilly committed patients "unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or improve his mental condition."

It was not until August, 1971, that the plaintiffs expanded their class to include residents of Partlow State School and Hospital. In their petition to the court, the plaintiffs requested that the court promulgate and order implemented minimally acceptable standards for the functioning of Partlow. Additionally, they requested appointment of a master, a professional advisory committee to oversee implementation of the judicially-ordered guidelines, appointment of a human rights committee to protect residents' rights, and an injunction against state expenditures for nonessential functions of the state and allocation of these funds to the department's facilities.

On September 22, 1986, more than 14 years after Judge Frank M. Johnson, Jr. rendered his historic decision in the Wyatt v. Stickney litigation, Judge Myron Thompson in the United States District Court for the Middle District of Alabama approved a consent settlement of the litigation. Unlike the passionate pleas of the plaintiffs' and defendants' attorneys and their "experts" in previous hearings, the tone of these proceedings was conciliatory.

Beginning at 10:15 a.m. on August 22, 1986, and lasting for less than 5 hours, each party to the litigation presented its justification for entering into a consent decree. As much a case of state's rights as a case of the rights of mentally retarded persons, it appeared that all parties to the litigation and the federal court were seeking a justifiable reason for returning the mental health system back to the state's "control," while protecting the rights of the class members. The present hearing, like the previous hearing held on January 10-14, 1983, was heard before Judge Myron Thompson. During the 1983 hearing, a number of motions were presented to the court and debated, including a proposed settlement agreement between the United States Justice Department and the state of Alabama; however, Judge Thompson never ruled on these motions.

In the present hearings, the issues before the court, the system represented, and the social and political forces operating at the state and national levels which affected the final outcome were very different from those detailed in previous hearings. A

number of appellate decisions since 1972 such as Youngberg v. Romeo (1982) and Newman v. Graddick (1984) have called into question a number of conclusions reached in Wyatt and appear to have impacted on the plaintiffs' decision to enter into a consent decree. To understand the ultimate outcome in Wyatt, we first must understand the key issues contained in the consent decree and the antecedents which have led up to the proposed settlement.

Consent Decree

In July, 1986, a proposed consent decree was presented to the court after months of negotiations between the plaintiffs' and defendants' attorneys. Details of the proposed settlement were presented in local newspapers, and copies were distributed to interested parties throughout the state. At the hearing all interested parties were provided an opportunity to speak in support of or against the proposed agreement. Representatives from the Alabama Developmental Disabilities Advocacy Program, the Mental Health Association of Alabama, and the Association for Retarded Citizens of Birmingham spoke against the settlement. The statewide

ARC did not oppose the settlement. The Alabama Developmental Disabilities Advocacy Program, a statewide system designated in accordance with the Developmental Disabilities Assistance and Bill of Rights Act to advocate on behalf of individuals with developmental disabilities, submitted correspondence on August 14, 1986, outlining their objections to the settlement. Judge Thompson provided the organization until August 27, 1986, to file a brief in support of their position; however, they chose not to file a brief in this case. The court monitor also objected, in writing, to the settlement, but he did not offer testimony.

In order to better understand the details of the consent decree and its impact on the mental health system in Alabama, it is necessary to first detail key elements of the consent decree. These include:

(1) that all pending motions presently before the court be denied as moot;

(2) that the court's active supervision of the state's mental health and mental retardation system be terminated;

(3) that the court's prior orders placing the Alabama mental health and mental retardation system in receivership be vacated;

(4) that the obligations and powers of the court monitor be terminated as of October 1, 1986;

(5) that all defendants except for the Commissioner of Mental Health and Mental Retardation and the institutional directors be dismissed as parties in this action;

(6) that the prior orders and standards issued by the court regarding the obligations of the state's mental health and mental retardation system were to remain in effect;

(7) that the mental retardation system should continue to maintain Title XIX accreditation;

(8) that the mental retardation system should continue to make substantial progress in placing members of the plaintiff class in community facilities and programs;

(9) that plans filed by the state reflecting plans for capital spending were to be submitted to the legislature and were to

remain under seal until presented in the upcoming session;

(10) that the private plaintiffs and the defendants were enjoined to cooperate to establish the following:

(a) a process by which the private plaintiffs' counsel will be apprised of the progress made by the defendants;

(b) a process by which the defendants will continue to receive input from independent experts concerning means of achieving the goals of the consent decree;

(c) a patient advocate system to be operated within and by the Alabama Department of Mental Health and Mental Retardation to help protect the rights of the plaintiff class; and

(d) a quality assurance system to be implemented and operated by the central office of the Alabama Department of Mental Mental Health and Mental Retardation to monitor and assure the quality of care provided by the department.

Finally, the court indicated the parties are placed on notice that the court will entertain requests to re-assert its active supervision of the Alabama mental health and mental retardation system if defendants do not continue to make substantial progress toward the ends in the decree.

The court also indicated that defendants may move after October 1, 1988, for a finding that they have met their obligations under this consent order.

The defendants were also ordered to pay the private plaintiffs their costs and a reasonable attorneys' fee for legal work done in connection with all pending motions and the negotiation of this decree.

Many individuals will question the ultimate wisdom of the court in agreeing to this consent decree. It appears that Ira A. Burnim, who was authorized to act in behalf of the plaintiffs' intervenors and the original plaintiffs with respect to the settlement, summed it up best in his opening remarks to the court. Mr. Burnim stated that the ultimate question to be answered is if

the settlement is fair and reasonable. He indicated that the plaintiffs obtain the following benefits from the settlement:

(1) First, it preserves the Wyatt case, and if the state fails to comply with the agreement or does not adhere to its agreements, a mechanism is available for the plaintiffs to re-enter the suit. In his order, Judge Thompson indicated, "...the plaintiffs are still authorized by the settlement to request appropriate relief from the court. That relief would include reactivation of active court supervision of the system if warranted."

(2) Secondly, Mr. Burnim questioned if some of the Wyatt standards are enforceable today based on current case law and the Youngberg v. Romeo and Newman v. Graddick decisions. He questioned if the plaintiffs could actually win an appeal of the case and if the Wyatt standards would stand at all. In his order, Judge Thompson recognized the weakness of the plaintiffs' posture in this case and indicated "after the initiation of the last round of this litigation, which was in

substantial part a vigorous frontal attack by the defendants in the continued validity of the court's prior standards and orders, a number of appellate decisions cast substantial doubt on whether these standards and orders can withstand the challenge."

(3) Third, it was pointed out to the court that in a sense the defendants were placing themselves in a vulnerable position, because by agreeing to the settlement, they are agreeing to to the Wyatt standards and will be judged on their compliance with these standards. Judge Thompson also recognized this in his order and indicated, "As both the plaintiffs and the defendants now correctly observe, the incorporation of these standards into a settlement makes these standards and orders unsusceptible to challenges because of present and future changes in the law."

(4) Fourth, Mr. Burnim pointed out that he suit is good from the point of litigation itself. With Alabama's facing significant financial problems at the time of this hearing, the plaintiffs

may be forced to litigate again in the near future regardless of the outcome of the case. The settlement provides a mechanism for the plaintiffs to hold the department to the agreement and prevent future litigation.

(5) Fifth, the settlement forces the department to comply with Title XIX standards while maintaining compliance with Wyatt. In the previous proposed settlement with the Justice Department, Title XIX standards would substitute for Wyatt. With reference to this, Judge Thompson indicated in his order, "Without question, one of the most significant things bargained away by the defendants in order to secure the plaintiffs' approval of the settlement is the defendants' vigorously asserted, and often repeated, contention that the court's prior standards and orders are always subject to attack because of present and future changes in the law."

(6) Sixth, there is also a requirement to place a substantial number of individuals into community settings, thereby reducing institutional beds. Mr. Burnim indicated that a

problem with the original Wyatt standards and rulings was that they primarily dealt with institutions and did not focus on the community. While litigation has tried to broaden rulings to community programs, it has essentially failed. Judge Thompson indicated in his order, "Perhaps most importantly, the settlement achieves something the plaintiffs were unable to achieve in the past: it substantially broadens the focus of the litigation to community placement and requires that the defendants made substantial progress in placing people in the community."

(7) Seventh, it establishes a patient advocacy system in place of the court monitor's office. Mr. Burnim indicated that the only way to settle this case is for the department to take control of ensuring patients' rights and the quality of services, and the settlement provides a mechanism for the department to take a more aggressive posture in this area. He recognized that the monitor's office which costs over $300,000 a year was not effective because all parties continuously

disagreed on the accuracy of their findings, and the system had become adversarial and was not achieving its original objectives.

The question will then be asked, so what did the defendants gain by the settlement? It appears that the primary benefit to the department, and ultimately to the state, is to once again have control of a system which has been under federal domination for the last 14 years and the recognition of their substantial accomplishments during that period of time.

It accomplishes this in a number of significant ways. First of all, the settlement resolves the unanswered motions before the court in 1983. The receivership was terminated, the request to divert funds from other state funding sources was denied, and the motion to substitute Title XIX standards for Wyatt standards is considered moot. Also, the settlement provides for the dissolution of the office of the court monitor, an office which was created to monitor on a daily basis compliance with the court's standards and orders, the effectiveness and economic reasonability of which had

been seriously questioned by many persons involved on both sides of the litigation. The department will put in place and operate its own advocacy program to protect the rights of mentally retarded persons in its care and a quality assurance program to assure the quality of care provided to its residents.

In his order, the judge recognized the futility of maintaining the office of receiver and indicated, "The court doubts whether, under the present law and facts, the continuation of the receivership could be justified." He went on to indicate that "most importantly, the receivership was never a true receivership; the receiver was never independent of the defendants, and, while specifically empowered to bring about immediate and substantial changes not otherwise obtainable, the receiver never exercised these powers. The receivership, in effect, merely shifted the responsibility for the mental health and mental retardation system from one state official or group of officials to another state official. The creation of the receivership was more an act of

significance than substance, and with time, it has lost even its significance."

Many will no doubt question the significance of the Wyatt settlement on national policy. After all, for more than 14 years, the case has been at the forefront and has significantly affected all aspects of our service delivery system. Indeed, many will debate if the defendants or plaintiffs won the litigation as if viewing a prize fight which was settled in decision. However, it appears that the ultimate winners in this litigation were the mentally retarded persons whom the system was mandated to serve. No one in Alabama or at the national level can ultimately question the benefits that were derived from the original Wyatt litigation. This settlement not only preserves those benefits but sets a new and vigorous approach for the future.

Today Alabama has 5 residential facilities serving less than 1300 persons with mental retardation. Partlow remains the largest with 360 beds rather than 2300, and the other facilities have 325, 217, 208, and 200 respectively. Our staff-to-resident ratio

exceeds the national average and is approximately 1.85 excluding contracted services. Our per diem is presently approximately $128. In the last year the majority of multi-story buildings have been demolished at Partlow. By the end of this summer, no resident will live in a multi-story building but will reside in modern residential cottages.

Our community system continues to grow and presently serves approximately 550 in community residential programs and 2700 in day programs. All 5 of our facilities are Title XIX-certified, and we will be seeking ACDD-certification in the near future.

Our budget for 1987-88 reflects, however, the state's general economic problems, and our request before the legislature reflects a decrease in real dollars. There is uncertainty regarding approval of the capital outlay plan to expand and upgrade community programs. In some areas of the state, there remains political opposition for further decreasing bed capacities. Federal disincentives for institutional bed closures and community bed increases remain in Alabama as in every state in our nation.

Judge Johnson was once asked, "Which is higher, the conscience of the people or the conscience of the court?" To this he replied, "They shouldn't be any different. They should be the same. Court opinions can, on a short run, be enforced against the will of the people. In the long run, there's no way to enforce them against the will of the people. If they violate the conscience of the people, they won't stand. For court decisions to be effective, they must be accepted by the people. I submit to you, in this section of the country, and I'm not just talking about Alabama, we are proud of the fact that we have, with a minimum amount of disruption, implemented a case that cut across the social fabric to the extent that case did."

The employees of the Department of Mental Health and Mental Retardation who have worked hard during the last 14 years to transform the Wyatt standards into tangible benefits for the mentally retarded persons whom they serve are indeed proud of their accomplishments. Our mission now is to look to the future as we embark on a new phase of Wyatt.

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